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VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

**Re: Public Service Commission of South Carolina – Administrative and
Procedural Matters
Docket Number: 2005-83-A**

Dear Ms. Boyd:

I am filing this letter on behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (together, the “Companies”) in response to the Public Service Commission of South Carolina (the “Commission”) staff’s request for comments regarding the draft amended *Pro Se* Litigant Guide (the “Guide”) posted in this docket on May 18, 2021. The Companies appreciate the opportunity to provide input on the proposed changes and respectfully submit the following limited comments.

Page 12 of the Guide discusses the complaint procedure and provides, in part, as follows: “The information presented in the complaint form will serve as your prefiled testimony for your case. It is important that your Statement of Facts be accurate, specific, and concise.” The Companies recognize that in certain cases, requiring a complainant to file direct testimony would be unnecessary where the facts are limited, non-complex, and sufficiently detailed within the complaint. However, in some cases, the complaint is simply insufficient for anyone—the Commission or the utility—to understand why the complainant believes he or she is entitled to relief and the actual positions to be taken by the complainant in the proceeding. It is axiomatic that a complaint must state a claim upon which relief may be granted by the judicial body, in this case, the Commission. *See Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (stating that the lower tribunal should only consider the allegations in the complaint when considering a motion to dismiss and requiring that the complaint state a “valid claim for relief”).

The Honorable Jocelyn G. Boyd
 May 26, 2021
 Page 2

Further, the Companies firmly believe that principles of procedural fairness require complainants to prepare and file direct testimony prior to the utility filing its own testimony; otherwise the defendant utility will not have adequate notice of the matters at issue in the proceeding. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 574, 743 S.E.2d 778, 785 (2013) ("It is elementary that the principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial."); Order No. 1996-629 at 2, Docket No. 1996-259-WS (Sept. 10, 1996); *see also* S.C. Code Ann. Regs. 103-802 ("[The Commission's regulations concerning Practice and Procedure] are intended to insure that all parties participating in proceedings before the Commission will be accorded the procedural fairness to which they are entitled by law."); *Ross v. Med. Univ. of South Carolina*, 317 S.C. 377, 381, 453 S.E.2d 880, 883 (1994) ("[A] reviewing court has the duty to examine the procedural methods employed at an administrative hearing to ensure that a fair and impartial procedure was used."). While the Companies do not believe that every *pro se* complainant should be required to file direct testimony, the Companies believe that, consistent with S.C. Code Ann. Regs. 103-842(C), complainants should generally be required to file direct testimony prior to the Respondent filing its own direct testimony.

Nevertheless, if a complaint is to serve as direct testimony, the Companies recommend revising the Guide in a way that clearly communicates to *pro se* litigants that the complaint must be sufficiently detailed to inform both the utility and the Commission of the basis of any alleged wrongdoing, as well as the rule or regulation the utility is alleged to have violated. Without these details, the Companies are unable to adequately respond to the complaint. To that end, the Companies recommend including the following language on page 12 of the Guide, with additions highlighted in yellow:

- The information presented in the complaint form will serve as your prefiled testimony for your case. It is important that your Statement of Facts be accurate, specific, and ~~concise~~ complete. Because the Statement of Facts/Complaint will serve as your prefiled testimony, the Complaint must be detailed enough to inform the Commission and the utility of the alleged wrongdoing by the utility, as well as the rule or regulation the utility is alleged to have violated. If the Complaint does not state a claim that can be resolved by the Commission, your Complaint may be dismissed.
- If additional documentation is necessary to supplement your complaint, attach it to the form. **Do not attach any documentation that contains personal identifying information such as social security numbers, driver's license numbers, checking account numbers, federal identification numbers, etc. without first deleting this information from the document.**
- Complete the Verification section of the form. The form must be dated and signed before it will be processed. If the complaint involves a utility account, the person filing the complaint must be the customer of record. ~~The information presented in the complaint form will serve as your prefiled testimony for your case. It is important that your Statement of Facts be accurate, specific, and concise.~~

The Honorable Jocelyn G. Boyd

May 26, 2021

Page 3

The Guide also outlines for *pro se* litigants pre-hearing procedures, including discovery. While it is important for *pro se* litigants to understand their right to conduct discovery, the Companies believe the Guide should similarly emphasize the obligation of *pro se* complainants and intervenors to respond to interrogatories and requests for production. To that end, the Companies propose adding the following highlighted language regarding discovery obligations on page 15 of the Guide:

During the period prior to the hearing, the parties may conduct discovery, that is, they may ask each other questions through the use of written interrogatories, oral depositions, or other allowable discovery methods (Regulations 103-832 through 103-835). Please note that intervenors and Complainants are subject to discovery, meaning that they are required to respond to requests for information and to produce documents that may be relevant to the proceeding. At times, the parties may file various pretrial motions to be ruled upon by the Commission (Regulation 103-829). In complex cases, one or more of the parties may request a prehearing conference, where all the parties to a case can meet or teleconference to simplify issues, or perform other administrative functions prior to the hearing (Regulation 103-839).

The Companies believe these additional updates to the Guide will benefit both *pro se* litigants and utilities alike by (1) ensuring that all parties, and the Commission, understand why a complainant believes he or she is entitled to relief and (2) making *pro se* litigants aware of their obligation to respond to discovery requests in accordance with the Commission's regulations. The Companies appreciate the opportunity to submit comments and look forward to engaging with Commission staff and the other parties regarding updates to the Commission's *Pro Se* Litigant Guide.

Sincerely,



Katie M. Brown

cc: Parties of record